

MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE STATE BAR OF CALIFORNIA

August 27, 2003

9:30 a.m.

Videoconference Meeting at
Morrison & Foerster's L.A., S.F., Palo Alto and San Diego Offices

The August, 2003 meeting of the Uniform Commercial Code Committee (the "Committee") was called to order at approximately 9:30 a.m. with Peter Szurley and Pauline Stevens presiding.

A. Administrative Matters.

1. Appointment of Secretary. Dolph Hellman was appointed as the secretary for the meeting.

2. Approval of July Meeting Minutes. The minutes of the July 30, 2003 meeting were approved in the form disseminated prior to the meeting, with minor corrections.

3. Confirmation of Future Meeting Dates/Locations. The Committee confirmed future meeting dates as follows:

October 1st (Wednesday): in person meeting in Los Angeles at the Airport Marriott Hotel, 9:30 a.m.

October 29th (Wednesday): in person meeting at the California Secretary of State's Office in Sacramento, 10:30 a.m.

December 3rd (Wednesday): videoconference at the offices of Morrison & Foerster in Los Angeles, Palo Alto, San Diego and San Francisco, 9:30 a.m.

Future meeting dates will be selected at the meeting on October 1st.

4 Update Regarding Resignation of Two Members. Peter Szurley reported that current Committee members Tori Brew and Jill Matichak had tendered their resignation effective immediately due to time constraints. As a result of their resignation, Peter Szurley suggested that two new members be added to the Committee to serve in their place for the remainder of their terms (both Tori Brew and Jill Matichak were appointed to a term expiring in September, 2005). The Committee then discussed the recent applications submitted by David Thill and Lary Lawrence for appointment to the Committee. After deliberation, the Committee recommended that both David Thill and Lary Lawrence be appointed to the Committee to serve a term expiring in September, 2005, subject to approval by the Executive Committee. Peter Szurley indicated that he would so submit their names to the Executive Committee at the next Executive Committee meeting in early September.

5. Update Regarding Business Law Section Annual Meeting Program. Pam Martinson noted that the program on legal opinions in secured transactions (the "Program") will take place on September 4, 2003 (Thursday) at the BLS Meeting at the Anaheim Hilton between 4:30 and 5:30 p.m. Peter Szurley mentioned that a recent "Web Blast" advertising the Program was sent to all section heads and to the UCC Constituency List encouraging their attendance at the Program. Peter Szurley also encouraged all Committee members to invite their colleagues to attend.

B. Status Report on Secretary of State Automation Project (the "Project").

Vasco Morais reported that he had confirmed that Kathleen Vasquez (UCC Division California Secretary of State's Office (the "SOS")) was available for our proposed in person meeting in Sacramento on October 29th and that at the meeting Committee members would be able to view an on-line demonstration of the Project (as opposed to a presentation in paper format that had been done at prior meetings). Vasco Morais also reported that the Project is still tentatively scheduled to be rolled out by the end of December, 2003. Vasco Morais also indicated that the following matters will be discussed at the October 29th meeting: (i) testing of the Project and training related to same; (ii) status of additional meetings recently held between the SOS's office and various UCC service providers on the possible use of a XMLT format as a UCC filing template; (iii) status of discussions with the Franchise Tax Board regarding the electronic filing of tax liens; and (iv) explanation regarding additional UCC administrative rules being considered and to discuss same with the Committee prior to forwarding them to the office of administrative law for consideration. Arnold Rosenberg suggested that at the October 29th meeting, the Committee should ask Kathleen Vasquez as to whether or not the SOS has approached the IRS to see if federal tax liens could also be filed on-line.

C. Report of the Article 7 Subcommittee.

The revised report (incorporating comments that had been received in connection with the prior draft of the report that had been circulated to the Committee in advance of the July meeting) had been circulated to the Committee in advance of today's meeting. Arnold Rosenberg reported that the revised report reflected comments received from the Committee as well as changes made by NUCCSUL at their most recent meeting. Arnold Rosenberg also reported that none of the changes made at the recent NUCCSUL meeting related to topics discussed at the July meeting. Harry Sigman reported that he expects Revised Article 7 will be introduced in California and around the country by NUCCSUL by January, 2004, and that the most recent changes adopted by NUCCSUL related to the transition provisions and that he viewed these changes as a necessary improvement. Harry Sigman also commented that if we stay on pace the Committee will have the first state bar report on Revised Article 7 out in the country. The Committee then discussed the need to reformat the report prior to sending it to the Executive Committee for their review as it is organized by topics (as opposed to sections). After some discussion, the Committee determined that this format should not be a problem. Pauline Stevens volunteered to refine the report somewhat for style, and Arnold Rosenberg encouraged Pauline Stevens and others on the Committee to provide comments. Arnold Rosenberg also indicated that he might prepare additional commentary as to why Section 7-105 is not being changed. Peter Szurley then suggested that the subcommittee's goal should be to finalize the

report and provide it to the Executive Committee by the end of November, 2003 in order to submit it to the California State Legislature on or prior to January, 2004.

D. Report of the Article 6 Subcommittee.

A draft report reflecting the Committee's view that Article 6 should be repealed had been circulated to the Committee in advance of today's meeting. Sandra Shippey indicated that the subcommittee members had not yet had an opportunity to review or comment on the draft report, but that all Committee members were encouraged to provide comments. In addition, Sandra Shippey requested that Committee members also provide antidotal comments regarding their experience with Article 6 and bulk sales generally. Sandra Shippey indicated that she will be circulating a revised draft of the report some time the week of September 1st and that she would like to receive comments to that draft no later than 10 days after it is distributed. She would then like to have a final draft of the report circulated to the Committee in advance of the October 1st meeting. Harry Sigman commented that he would like to have the report approved by the Executive Committee and submitted to Byron Shurp and the California State Legislature prior to January, 2004 so that repeal of Article 6 could be considered in the next legislative session. Harry Sigman also noted that the BLS Debtor/Creditor Committee may also like to review the report, but he and others recognized that it would not be feasible for the BLS Debtor/Creditor Committee to review and approve the report in time to meet our deadlines. As a result, the Committee agreed that we should provide a copy of the final report (once it has been approved by the Executive Committee) to both the California State Legislature and the BLS Debtor/Creditor Committee in the hopes that the BLS Debtor/Creditor Committee will concur with our report and provide additional support for the repeal of Article 6. In any event, the final draft of the report will be circulated for consideration at our October 1, 2003 meeting.

E. Report of the Article 2 Subcommittee.

Pauline Stevens reported that the Article 2 subcommittee had a conference call earlier in the week to discuss how best to attack the 400+ pages concerning the proposed changes to Articles 2 and 2A. It was decided during that conference call that the subcommittee would divide up the materials based upon categories of topics (e.g., changes designed to make Articles 2 and 2A more technologically friendly, substantive changes, changes to conform with other California law, etc.). Once the changes have been categorized, the subcommittee intends to prepare a draft report outlining and discussing the proposed changes. Pauline Stevens, per a suggestion from Mark Spitzer made during the subcommittee conference call, suggested that the size of the subcommittee be increased. Peter Szurley encouraged the new members that were in attendance to volunteer to participate on the subcommittee, and new members Samantha Good and Paul Barkes volunteered to be members on the subcommittee. Pauline Stevens suggested that given Lary Lawrence's background, it might make sense for him to also serve on the subcommittee. Harry Sigman noted that it was important that the subcommittee complete its report prior to the end of the year so that it can be provided to members of the California State Legislature prior to its introduction at the next legislative session. Given that timeline, Peter Szurley suggested that the subcommittee work to have the report prepared by the end of October. Pauline Stevens stated that she thought that was an overly ambitious goal, and that they would provide the Committee with a workable timeline at the next meeting on October 1, 2003.

F. Report of the Legal Opinion Subcommittee.

Marty Fleisher reported that the subcommittee had been meeting frequently (on average every other week) and that they were making good progress. Marty Fleisher reminded the Committee that since the initial draft of the report had been circulated to the Committee in March, the subcommittee had considered all of the comments raised by Committee members, attorneys at other law firms and Steve Weiss, and that excellent progress had been made on improving the report and making it more readable. Marty Fleisher also reported that the report is being drafted with an eye to how issues had been addressed in the Tri Bar report, and that the California report would address areas of difference and explain the rationale behind them. In that regard, Marty Fleisher mentioned that former Committee Co-Chairperson Robert Spjut had prepared a chart comparing the differences between the proposed California report and the Tri Bar report (a copy of which had been circulated prior to the Committee meeting) and that this chart would be used as a basis to discuss the differences at the subcommittee level. Marty Fleisher indicated that Pam Martinson would serve as the chairperson of the subcommittee going forward since his term was expiring, but that he would continue to work on the subcommittee until the process had been completed. Peter Szurley commented that given the size and scope of the report, that it did not make sense to circulate any interim drafts until the entire redraft of the report had been completed. Peter Szurley also asked for volunteers to serve on the subcommittee and Dena Cruz volunteered. Pam Martinson mentioned that at the October 1, 2003 meeting the subcommittee will ask the Committee to comment on one discrepancy between the proposed California report and the Tri Bar report to seek the Committee member's input as to whether or not the different approach made sense.

G. Report Regarding the Pending Uniform Certificate of Title Act (the "Act")

Victoria Gilbert indicated that she would like additional Committee members to assist her in her review of this proposed legislation. Harry Sigman indicated that NUCCSUL had given the proposed Act a "first run through", but that there was still a lot of work to do before it would be in a form ready for submission to various state legislative bodies. Harry Sigman also mentioned that at this time it would make sense for the subcommittee members to familiarize themselves with the proposed Act and then be in a position to comment once NUCCSUL completes its work.

H. Legislative Subcommittee.

Peter Szurley suggested that he thought that it was important that this subcommittee become re-energized and begin tracking and reporting on proposed legislation at each of our monthly Committee meetings. Harry Sigman indicated that he thought two skill sets were necessary to serve on this subcommittee: (i) the ability to track legislation; and (ii) the time and commitment to review any proposed legislation and provide comments by e-mail to Committee members as quickly as possible after such proposed legislation is introduced so that the Committee will be in a position to react. Pauline Stevens indicated that the Committee calendar will contain reminders that these e-mail alerts are to be sent. Peter Szurley stated that he would circulate an e-mail in advance of the next meeting asking for volunteers to serve on the subcommittee.

I. Website Update.

Gary Rosenbaum reported that our webpage has been updated and that henceforth it will be scheduled to be updated during the second week of each month. In that regard, the new roster of Committee members will be posted on the webpage. Gary Rosenbaum also mentioned that the deadline to post new materials in September is September 8th. In addition to the updated roster of Committee members, Peter Szurley mentioned that we should also post a list of projects the Committee plans to undertake in 2003-2004. Peter Szurley also mentioned that this subcommittee is also looking for new members and that he will circulate an e-mail requesting that the new members join.

J. Committee Calendar.

Pauline Stevens mentioned that they were a couple of items on the Committee Calendar that should be discussed. Specifically, the deadline to submit topics for the CLE program in January is September 19, 2003, and the deadline to submit topics for the Spring Business Law Section meeting is October 20, 2003. The Committee discussed whether or not it made sense to prepare presentations for both meetings. It was decided that the Committee should focus its attention on preparing a presentation for the Spring Business Law Section meeting. Possible topics include an overview of the various proposed changes to Articles 1, 2, 2A, 3, 4 and 6 of the UCC.

K. Final Thoughts of Departing Co-Chairperson.

Departing Co-Chairperson Peter Szurley in an emotional farewell speech thanked each of the Committee members for their hard work and dedication during the past year, congratulated Pauline Stevens, Andy Erskine, Vasco Morais and Sandy Shippey on their appointments to co-chairperson and co-vice chairperson positions for the 2003-2004 term, respectively, and encouraged all of the new Committee members to seize upon the opportunity that has been presented to them to contribute to the California legal community.

The meeting was adjourned at approximately 11:15 p.m.